

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

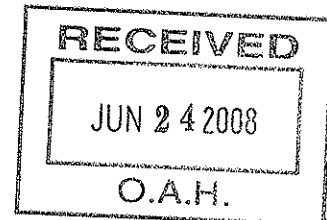
2 In the Matter of the Mortgage Broker License of:

No. 08F-BD068-BNK

3 **BLUE CHIP CAPITAL, INC.**
4 600 W. Ray Road, Suite D-4
5 Chandler, AZ 85225

NOTICE OF HEARING

6 Petitioner.



7 PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-137,
8 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of
9 Administrative Hearings, an independent agency, and is scheduled for July 29, 2008, at 9:00 a.m., at
10 the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602)
11 542-9826 (the "Hearing").

12 The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order
13 pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to
14 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
15 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
16 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
17 suspension or revocation of Petitioner's license pursuant to A.R.S. § 6-905; and (4) an order or any
18 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
19 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

20 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of
21 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied
22 or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to
23 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the
24 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office
25 of Administrative Hearings has designated Lewis Kowal, at the address and phone number listed
26 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative

1 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the
2 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final
3 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law
4 Judge is specifically prohibited from entering.

5 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**
6 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
7 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
8 Administrative Hearings.

9 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
10 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable
11 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence
12 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative
13 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.
14 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

15 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
16 made by a court reporter or by electronic means. Any party that requests a transcript of the
17 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

18 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
19 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

20 **NOTICE OF APPLICABLE RULES**

21 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")
22 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting
23 forth the rules of practice and procedure applicable in contested cases and appealable agency actions
24 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules
25 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through
26 R2-19-122. A copy of these rules is enclosed.

1 Pursuant to A.A.C. R20-4-1209, Petitioner shall file a written answer **within twenty (20)**
2 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioner's position
3 or defense and shall specifically admit or deny each of the assertions contained in this Notice of
4 Hearing. If the answering Petitioner is without or are unable to reasonably obtain knowledge or
5 information sufficient to form a belief as to the truth of an assertion, Petitioner shall so state, which
6 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioner
7 intends to deny only a part or a qualification of an assertion, or to qualify an assertion, Petitioner
8 shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised
9 in the answer is deemed waived.

10 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioner will be**
11 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as
12 true and admitted and the Superintendent may take whatever action is appropriate, including
13 suspension, revocation, denial of Petitioner's license or affirming an order to Cease and Desist and
14 imposition of a civil penalty or restitution to any injured party.

15 Petitioner's answer shall be mailed or delivered to the Arizona Department of Financial
16 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
17 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
18 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy
19 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

20 **Persons with disabilities may request reasonable accommodations such as interpreters,**
21 **alternative format or assistance with physical accessibility.** Requests for accommodations must
22 be made as early as possible to allow time to arrange the accommodations. If accommodations are
23 required, call the Office of Administrative Hearings at (602) 542-9826.

24 **FACTS**

25 1. Petitioner Blue Chip Capital, Inc. ("Blue Chip") is an Arizona corporation authorized to
26 transact business in Arizona as a mortgage broker, license number MB 0904457, within the meaning

1 of A.R.S. §§ 6-901, *et seq.* The nature of Blue Chip's business is that of making, negotiating, or
2 offering to make or negotiate loans secured by Arizona real property, within the meaning of A.R.S. §
3 6-901(6).

4 2. On September 22, 2006, the Department received a complaint and as a result the
5 Department finds Blue Chip:

6 a. Misrepresented or concealed an essential or material fact in the course of the
7 mortgage broker business and knowingly advertised, displayed, or caused to permit
8 any false, misleading or deceptive statement or representation with regard to the rates,
9 terms or conditions for a mortgage loan. Furthermore, the charges or rate of charge
10 were not set forth in such a manner as to prevent misunderstanding by prospective
11 borrowers; specifically:

12 i. On or about September 22, 2006, the Department received a complaint,
13 Complaint # 4010968, regarding Petitioners' advertising. The complainant
14 provided a copy of Blue Chip's advertisement and stated the advertisement
15 was misleading in several ways, including but not limited to:

16 1. The advertisement appeared to indicate that complainant's mortgage
17 payment was going to be raised by ING; and the complainant was
18 obligated to call Blue Chip; and only upon careful review of the small
19 print did the complaint discover and realize that ING was not affiliated
20 with Blue Chip.

21 ii. On or about September 22, 2006, the Department sent a letter to the Petitioner
22 and requested a response to the complaint;

23 iii. On or about September 29, 2006, the Department received a response from the
24 Petitioner. In its response, the Petitioner claims among other things, that:

25 1. The advertisement is, "clear, concise, and simple. It is a solicitation
26 to refinance homeowners who currently have an adjustable rate

1 mortgage”;

- 2 iv. The advertisement misleads the recipients into believing that they must call
3 Blue Chip to avoid a probable payment increase;
- 4 v. The advertisement does not state that the only way to get the reduction is to
5 refinance; and
- 6 vi. The advertisement leaves the impression that there is an impending change in
7 the recipient’s mortgage payment due to the “MORTGAGOR PAYMENT
8 CHANGE NOTICE” and “Adjustment Notice” under 24 CFR § 203.49 that is
9 disclosed on the envelope.

10 b. Engaged in illegal or improper business practices; specifically:

- 11 i. Petitioner is responsible for this advertisement;
- 12 ii. Petitioner failed to comply with Regulation Z and Federal Trade Commission
13 regulations by failing to include:

14 1. The phrase, “rates subject to increase after settlement.”

15 3. Based upon the above findings, the Department issued and served upon Blue Chip an
16 Amended Notice of Assessment on May 28, 2008.

17 4. On May 30, 2008, Petitioner filed a Request For Hearing to appeal the Amended Notice
18 of Assessment.

19 **LAW**

20 1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to
21 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,
22 rules, and regulations relating to mortgage brokers.

23 2. By the conduct set forth in the Findings of Fact, Blue Chip violated the following:

- 24 a. A.R.S. § 6-909(L) by making a false promise or misrepresentation or concealed an
25 essential or material fact in the course of the mortgage broker business by misleading
26 advertisement;


- 1 b. A.R.S. § 6-909(C) by knowingly advertising, displaying, distributing, broadcasting or
2 televising a false, misleading or deceptive statement or representation by advertising
3 in a way that misleads as to matters relating to payment changes; and
4 c. A.R.S. § 6-909(N) by engaging in illegal or improper business practices including but
5 not limited to their advertising, which failed to comply with Regulation Z and Federal
6 Trade Commission Regulations.

7 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order
8 pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to
9 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
10 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
11 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
12 suspension or revocation of Petitioner's license pursuant to A.R.S. § 6-905; and (4) an order or any
13 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
14 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

15 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the
16 above-described violations, the Superintendent may affirm the May 28, 2008, Amended Notice of
17 Assessment, pursuant to A.R.S. § 6-137; impose a civil money penalty pursuant to A.R.S. § 6-132;
18 suspend or revoke Petitioner's license pursuant to A.R.S. § 6-905; and order any other remedy
19 necessary or proper for the enforcement of statutes and rules regulating mortgage brokers pursuant to
20 A.R.S. §§ 6-123 and 6-131.

21
22 DATED this 24 day of June, 2008.

23 Felecia A. Rotellini
24 Superintendent of Financial Institutions

25 By 
26 Robert D. Charlton
 Assistant Superintendent of Financial Institutions

1 ORIGINAL OF THE NOTICE OF HEARING filed
this 24th day of June, 2008 in the office of:

2 Felecia A. Rotellini
3 Superintendent of Financial Institutions
4 Arizona Department of Financial Institutions
5 Attn: Susan L. Longo
6 2910 N. 44th Street, Suite 310
7 Phoenix, AZ 85018

8 COPY of the foregoing mailed/delivered same date to:

9 Lewis Kowal, Administrative Law Judge
10 Office of Administrative Hearings
11 1400 W. Washington, Suite 101
12 Phoenix, AZ 85007

13 Craig A. Raby, Assistant Attorney General
14 Attorney General's Office
15 1275 West Washington
16 Phoenix, AZ 85007

17 Robert D. Charlton, Assistant Superintendent
18 Richard Fergus, Department Manager
19 Lori Mann, Senior Examiner
20 Arizona Department of Financial Institutions
21 2910 N. 44th Street, Suite 310
22 Phoenix, AZ 85018

23 AND COPY MAILED SAME DATE by
24 Certified Mail, Return Receipt Requested, to:

25 Blue Chip Capital, Inc.
26 c/o Jason Richardson, President and
Responsible Individual
600 W. Ray Road Ste. D-4
Chandler, AZ 85225
Petitioner

Jason Richardson, Statutory Agent For:
Blue Chip Capital, Inc.
600 W. Ray Road Ste. D-4
Chandler, AZ 85225

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